



Appeal Decision

Site visit made on 11 June 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2024

Appeal Ref: APP/D4635/W/23/3333840

36-37 Princess Street, Wolverhampton WV1 1HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made on behalf of BoyleSports (UK) Limited against the decision of Wolverhampton City Council.
- The application Ref is 23/00681/FUL.
- The development proposed is change of use from Use Class E to Sui Generis (betting office), external alterations and advertisement consent.

Decision

1. The appeal is allowed, and planning permission is granted for change of use from Use Class E to Sui Generis (Betting Office) and external alterations at 36-37 Princess Street, Wolverhampton WV1 1HD in accordance with the terms of the application, Ref 23/00681/FUL, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with drawing numbers: PCS/WOL/13, PCS/WOL/12, PCS/WOL/8, PCS/WOL/9, and PCS/WOL/11.
 - 3) The premises hereby permitted shall not be open to customers outside of the following times: 08:00 to 22:00 hours.

Applications for costs

2. An application for an award of costs was made on behalf of BoyleSports (UK) Limited against Wolverhampton City Council. This application will be the subject of a separate decision.

Preliminary Matters

3. The description of development in the banner heading is taken from the application form, which was a joint application for change of use and advertisement consent. The Council has since granted advertisement consent to the appellant for an illuminated fascia and projecting sign¹. I have therefore amended the description in paragraph 1 above accordingly.
4. From the evidence before me the Council has no objection to the parts of the proposal which concern the alterations to the shopfront and the installation of AC condenser units and satellite dishes. Given the advertisement consent and

¹ Council reference 23/01135/ADV

the lack of objection to the external alterations, I shall restrict my consideration to the change of use only.

Main Issues

5. The main issues are:

- the effect of the proposed change of use on the vitality and viability of Wolverhampton city centre;
- whether or not the proposed use would create a safe and healthy environment, with particular regard to anti-social behaviour and fear of crime; and
- the effect of the proposed change of use on the character and appearance of the Wolverhampton City Centre Conservation Area.

Reasons

Vitality and viability

6. The proposed development comprises the change of use of the ground floor of 36-37 Princess Street to a betting shop together with external alterations to the frontage and the installation of air conditioning units and satellite dishes on the rear. The premises were last used as a bank and are situated on a section of Princess Street that is restricted to buses, cycles, and authorised vehicles only. The road has been laid with brick paving and benches installed along the footways.
7. During my visit I observed that this section of Princess Street already has three betting shops, and a pawn brokers. There are also three public houses, a hot food takeaway and two vacant units, one of which is the appeal site.
8. The appeal site lies outside of the Shopping Core and is, therefore, not a defined primary or secondary frontage. Consequently, the proposal would not fall to be considered under Policy CA1 of the Wolverhampton City Centre Area Action Plan 2015-2025 (CCAAP) which seeks to secure the defined Shopping Core as the main focus for retailing activity in the city and restricts the number of non-retail uses within the primary and secondary frontages.
9. Although there are already three betting shops in this small section of Princess Street there is no policy restriction to prevent the appeal proposal before me. Moreover, there is no national definition of over-concentration, and the local definition is set out in Policy CA1. Taking the usual meaning of the term over-concentration, as the Inspector did in the appeal at Bath Road, Hounslow², to be *having too much of something in one place*, the proposal would add a fourth betting shop within this small section of Princess Street. However, four of any single use would not result in an over-concentration, even in the small area around the appeal site.
10. Betting shops are Sui Generis uses in the Town and Country Planning (General Permitted Development) Order 2015. The explanatory memorandum, as quoted by the Council, advises that betting shops were removed from Use Class A2 and placed into Sui Generis use to ensure that planning permission is always required and to meet the commitment in the Gambling Protections and

² Appeal ref APP/F5540/W/22/3294792

Controls. Although that document notes the high level of concern regarding clustering of such uses the document advises that requiring planning permission enables local planning authorities to consider such uses in accordance with their local plan. It is for the Council to implement planning policies to control the clustering. In the case of the appeal site, which lies outside of the Shopping Core and identified primary and secondary frontages, the clustering policy would not apply.

11. Although, due to the presence of other betting shops in the immediate area, the proposed change of use would not add to the range of uses in the area, the appellant has provided evidence that betting shops act as a significant footfall generator. This is supported by several of the appeal decisions submitted by the appellant. Although the appeal site lies outside of the defined shopping core it is on the opposite side of a frontage that is within it. The proposal would bring the vacant unit back into use and would contribute to increasing the footfall along Princess Street. I understand the concerns of interested parties, however, the evidence shows that customers to betting shops also regularly link trips with visits to other uses within town centres.
12. Although there is a chance that the property might be brought back into use for a Class E use, now that the economic situation across the country is improving, the property has been marketed for Class E use for a reasonable period of time with no interest.
13. For the above reasons, I have no substantive evidence before me that the proposed change of use would harm the vitality or viability of Wolverhampton city centre. Consequently, I find no conflict with policies CEN1 and CEN2 of the Black Country Core Strategy, February 2011 (the BCCS) or policies CC3 and CA8 of the CCAAP.
14. Collectively, and amongst other matters, these policies seek to ensure that the Strategic Centres, including Wolverhampton city centre, provide the main focus for town centre uses including retail, office, cultural, leisure, commercial, and civic uses; require development to maintain and enhance the city centre and meet day-to-day shopping needs; support development which expands and diversifies the leisure, visitor and cultural economy of the city centre; and seeks to strengthen the role of the St Peter's Cultural Quarter as the cultural, civic and entertainment hub of the city centre.
15. For the same reasons, the proposed development would comply with the guidance in the National Planning Policy Framework (the Framework) which, at paragraph 90, seeks to support the role that town centres play at the heart of local communities, and takes a positive approach to their growth, management, and adaptation.

Anti-social behaviour, fear of crime and health

16. The concerns of the Council are supported by the objection from West Midlands Police and are echoed by local business owners. The Courts have held that fear of crime can be a material consideration if there is some reasonable, cogent evidential basis linking the proposed use or occupiers with criminal activity.
17. During my visit, which was during a sunny Tuesday afternoon, I spent approximately an hour on Princess Street. I observed and heard drinkers in the outside drinking area of the Old Still Inn. The drinkers remained within the

external area of the pub which is enclosed by fabric banners. There were other people, including myself, taking advantage of the seating on Princess Street. Nevertheless, I did not observe any evidence of anti-social behaviour beyond the noisy drinkers at the pub. Customers visited the existing betting shops during my site visit, though there was no evidence of people coming and going between the pubs in the immediate area and the betting shops. I did not see any evidence of customers standing outside the betting shops or loitering in the street.

18. Moreover, the area felt welcoming, clean, and well-maintained. The restriction to traffic has made Princess Street a pedestrian priority space and improved the character of the area. I also noted police presence in the form of a patrol vehicle passing through during my visit which enhanced the feeling of security for the area. Although there were less people than on the main shopping streets of the city centre there were people passing through and taking advantage of the seating provided. However, I also accept that my observations were of a snapshot in time.
19. West Midlands Police have advised that the site is in an IMPACT area. This covers the whole of the city centre, not just the area around the appeal site. The city centre includes a range of uses that would increase demand on the police force and it is not unreasonable to expect a higher demand for police presence in a city centre.
20. The objection from the Police also notes the large number of existing betting and gambling businesses near the appeal site and notes the high number of calls to these establishments. The detailed evidence from the Police includes incident records. Taking just the log entries relating to betting shops there are twenty-nine between February 2019 and June 2023 with the most in any one year being nine incidents. However, although there are incidents logged and attended by the police, I do not have specific details of these incidents and whether they were directly a result of the betting shop premises or customers.
21. Based on the evidence before me, there is already a high demand for police presence in the city centre and I accept that not all anti-social behaviour incidents are reported for the reasons given by West Midlands Police. Nevertheless, I have no substantive evidence to show that an additional betting shop would directly lead to an increase in street drinking, anti-social behaviour, or crime. Neither do I have any substantive evidence that the additional betting shop would lead to any greater risk of a flash point than the existing uses. Consequently, there is no reasonable, cogent evidential basis to link the proposed use or occupiers with criminal activity. There is, therefore, no evidential link that the proposed use would increase the fear of crime.
22. The appellant has also provided a copy of their Drug and Alcohol Policy which sets out the procedures staff should follow in instances of anti-social behaviour and crime within the premises. The proposed opening hours would be 08:00 to 22:00 and would, therefore, be open beyond the usual opening hours of retail uses but not late into the evening or 24 hours. The restriction preventing alcohol being brought into betting shop premises would result in anyone who is drinking alcohol to do so in the street outside, or in the nearby public houses, rather than in the betting shop. However, this could already be the case in Princess Street given the existing public houses and betting shops.

Furthermore, the proposal would bring a vacant building back into use and increase surveillance of the public space on Princess Street.

23. I also have no substantive evidence that the addition of one more betting shop would increase the risk of gambling-related health harm for the residents of Wolverhampton. There are already betting shops in this street and anyone wishing to partake in betting can already do so. It is not for me, under this appeal, to consider competition between betting shops and there is no requirement, in planning policy terms, to show a need for this use.
24. Moreover, as noted in the Council's evidence there are already a number of premises with alcohol licences in St Peter's Ward and, although there may be evidence of a link between alcohol and gambling, both of these services are already available to the residents. One additional betting shop would not cause harm that could be distinguished as a result of the proposed use, especially considering the evidence that the number of such facilities in the city centre as a whole has reduced.
25. The use of the appeal premises as a betting shop would also require a licence from the Council to which West Midlands Police and the Council would provide advice. The concerns regarding anti-social behaviour, crime, fear of crime and health would fall under the licencing obligations on the part of the operator and any breaches of the licence conditions would have their own sanctions.
26. Taking account of all of the information provided to me by both main parties and third parties, including the evidence from West Midlands Police, the reports, surveys, and appeal decisions, for the above reasons, I find that there is no definitive evidence that the proposed use would not create a safe and healthy environment or would increase anti-social behaviour and fear of crime. Accordingly, the proposal would not conflict with Policy D10 of the Wolverhampton Unitary Development Plan, June 2006 (the UDP) which requires development to take full account of the need to prevent crime, reduce the fear of crime and promote community safety.
27. For the same reasons, the development would not conflict with paragraphs 96, 101 or 135 of the Framework which, taken together, set out the aim to achieve healthy, inclusive and safe places; ensure that crime and disorder, including the fear of crime, do not undermine the quality of life; encourage active and continual use of public areas; enable and support healthy lifestyles; promote public safety; and create places that are safe and inclusive, promote health and well-being, where crime and disorder, and the fear of crime, do not undermine community cohesion and resilience.

Character and appearance

28. The appeal site lies within the Wolverhampton City Conservation Area (the Conservation Area). The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) ('the Act') provides, at section 72(1), that with respect to any buildings or other land, in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character, or appearance of that area.
29. The boundary of the Conservation Area encompasses the northern part of the city centre and extends beyond the identified shopping core. The Conservation Area includes some large properties, including the Grand Theatre and the art

gallery, but is predominately traditional street patterns where back of pavement buildings have been retained.

30. The appeal site currently makes a neutral contribution to the Conservation Area as a whole. The existing building follows the back of pavement building line but does not respect the plot widths or depths of the older premises, including those either side of it. Moreover, the building has modern window proportions and a large shop front. Notwithstanding this, the building does not harm the Conservation Area and can clearly be read as part of the planned development which is a characteristic of the Conservation Area.
31. The Council has not raised any concerns regarding the external alterations proposed to the building and, since determining the planning application, which is the subject of this appeal, has granted advertisement consent for the external adverts. The concern relates to the harm to the character and appearance of the Conservation Area from the potential for people to loiter in the street and the unwelcoming feeling this would cause.
32. I noted at my visit that Princess Street has been resurfaced and vehicular access is restricted. The street has a pleasant and open feel which is welcoming. There are public benches which are actively encouraging people to sit out in the street and encourage visitor dwell-time. These are not associated with businesses and the outside seating area for the nearby public house is enclosed by banners. The works that have been carried out to Princess Street have made a positive contribution to the character and appearance of the Conservation Area as a whole.
33. I have already found that there is no substantive evidence of an increased risk of the fear of crime. Consequently, there is no evidence that the proposed change of use would not continue to protect and enhance the character and appearance of the Conservation Area. Moreover, I have no reason to believe that the Council would not continue to be able to regenerate the area, even with an additional betting shop in this location.
34. For the above reasons, I find that the proposed change of use would preserve the character and appearance of the Wolverhampton City Centre Conservation Area. Consequently, the change of use would not conflict with Policy HE3 of the UDP's requirement for preserving or enhancing the Conservation Area. For the same reason, I find no conflict with Policy CA8 of the AAP which seeks to maintain, preserve, and enhance the character and appearance of the St Peter's Cultural Quarter. In coming to my decision, I have had regard to the Act as detailed above.
35. For the same reasons, the proposal would comply with the guidance in paragraphs 205 and 206 of the Framework which requires the consideration of designated heritage assets and requires clear and convincing justification for any harm.

Conditions

36. The Council has suggested conditions which I have considered, amending them if necessary to comply with the tests contained in the Planning Practice Guidance (PPG). In addition to the standard time limit condition, I have imposed a condition specifying the approved plans, for the avoidance of doubt. In the interests of the character and amenity of the area a condition to control

the opening hours is also necessary. I note that similar restrictions on opening hours were imposed in a number of the appeal decisions, relating to similar premises, supplied by the appellant.

Conclusion

37. For the reasons set out above, and having regard to all other matters raised, including the various third party representations made, I conclude that the appeal should be allowed.

K Townsend

INSPECTOR